IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

Crl.MC.No. 1875 of 2007()

CMP.1395/2007 of JUDL.MAGISTRATE OF FIRST CLASS COURT, KUTHUPARAMBA

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PETITIONER:

B.SHAHANAS, W/O ABDUL SALAM,
AGED 23 YEARS, NOORMAHAL,
176/5 KADAMBOOR, KANNUR.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS:

STATE OF KERALA THROUGH THE
SUB INSPECTOR OF POLICE, KUTHUPARAMBA POLICE
STATION, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1875 OF 2007

Dated this the 18th day of June, 2007

ORDER

The petitioner claims to be the owner of a vehicle – Toyota Qualis car. That vehicle was allegedly used by the accused persons to carry explosive substances. The vehicle and the explosive substances were seized. The petitioner is not an accused. She claims to be the owner of the vehicle. That, even allegedly, is her only connection with the offence allegedly committed. The petitioner applied under Sec.451 of the Cr.P.C. for the release of the vehicle seized by the police. By the impugned order, the learned Magistrate rejected the said application on the ground that the investigation is not complete.

2. The learned counsel for the petitioner submits that the order passed by the learned Magistrate is totally unjustified and unsatisfactory. That the accused have not

been arrested and the fact that the investigation has not been completed is no reason for the indefinite retention of the vehicle in the custody of the court. There is no specific assertion even that the retention of possession of the vehicle by the Investigator is in any way necessary or relevant for further investigation of the crime. I am, in these circumstances, satisfied that the prayer of the petitioner is justified and the vehicle deserves to be released to the petitioner subject, of course, to appropriate conditions.

3. All courts must alertly remember the dictum in **Sunderbhai Ambalal Desai v. State of Gujarat** (AIR 2003 SC 638) where the Supreme Court has frowned upon the practice of the vehicles and the properties being unnecessarily kept in the custody of the court/police in the course of investigation/trial. Such wanton loss/deterioration to the properties has got to be avoided. I am satisfied, subject, of course, to appropriate conditions, the prayer can be allowed.

4. In the result, this Crl.M.C. is allowed. The vehicle in question shall be released to the petitioner on the following terms and conditions:

(i) The petitioner shall produce all the documents before

the learned Magistrate to satisfy the learned Magistrate that she is the owner and entitled to possession of the vehicle.

(ii) The petitioner shall execute a bond for such amount and subject to such condition as the learned Magistrate may in his discretion fix.

(iii) The petitioner shall undertake to produce the vehicle as and when directed by the learned Magistrate before such authority as may be specified.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge